



the possibility that jurisdiction does not exist arises.”); 28 U.S.C.A. § 1446(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”). In this case, the court finds that the court lacks subject matter jurisdiction because the parties are not completely diverse. The question of diversity subject matter jurisdiction is determined on the plaintiff’s pleadings at the time of removal. Tillman v. R.J. Reynolds Tobacco, 253 F.3d 1302, 1306 (11<sup>th</sup> Cir. 2001) (citing Pullman v. Jenkins, 305 U.S. 534, 537, 59 S.Ct. 347, 83 L.Ed. 334 (1939) and Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1561 (11<sup>th</sup> Cir.1989)). Although Progressive asserts that the claims against the non-diverse defendant were settled prior to removal, the non-diverse defendant had not been dismissed from the suit. The parties’ attempt to dismiss Rudona Good after removal by filing a notice of dismissal with the Circuit Court after removal was non-effectual as the case was not before the Circuit Court at that time. Even if the filing were proper, the dismissal of the non-diverse party subsequent to removal does not cure the jurisdictional problem. At the time of removal, complete diversity did not exist in this case. Therefore, the case is due to be remanded for lack of jurisdiction.

### **CONCLUSION**

For the reasons stated above, this case is hereby **REMANDED** to the Circuit Court of Mobile County, Alabama.

**DONE and ORDERED** this 27<sup>th</sup> day of June, 2007.

/s/ Callie V. S. Granade  
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 CHIEF UNITED STATES DISTRICT JUDGE